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10 JOBY, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 JOBY, INC.,
17 Plaintiff,
18 v.
19 TOCAD AMERICA, INC.,
20 Defendant.
21

Case No. 3:07-CV-06455 (SI)

**DECLARATION OF MELISSA BURNS
IN SUPPORT OF JOBY, INC.'S
MOTION FOR A PRELIMINARY
INJUNCTION**

Date: May 2, 2008
Time: 2:00 p.m.
Courtroom: 10, 19th Floor
The Honorable Susan Illston

22
23 I, Melissa Burns, declare as follows:

24 1. I work primarily in strategy and marketing at Joby, Inc. I make this declaration
25 based upon my personal knowledge, and if called upon to testify, could and would testify
26 competently to the matters set forth below.

27 2. I joined Joby in July 2006. I have responsibility for development of business plans
28 and marketing strategy for Joby and its products, and I handle much of the day-to-day operations

1 of the company. Among other things, I monitor reviewer and customer feedback regarding the
2 products that the company receives through its web site and from customers that attend trade
3 shows, like MacWorld and Photo Plus Expo, that are open to consumers. I am also responsible
4 for addressing customer issues or inquiries that may require a corporate-level response.

5 3. Based on my work in these and in other areas of the company's business, I am
6 familiar with Joby's reputation. Our company has earned a reputation for providing fun,
7 innovative and high-quality products, based primarily on Joby's offering of the Gorillapod line of
8 tripods. I have received lots of feedback from customers who appreciate how well-made and
9 sturdy the Gorillapod is. I have attended trade shows on behalf of Joby during which the
10 company's booth has been swarmed by customers who are fascinated by the Gorillapod, ask to
11 play with it at our booth, and then buy it from us right on the trade show floor. At one show I met
12 a woman who had purchased the Gorillapod for her son to take on a solo backpacking trip around
13 the world. Her son was gone for a long time, but because he had a Gorillapod with him he was
14 able to take lots of photographs of himself (and not just the scenery) to send to his mother. She
15 told me it was the best purchase she had ever made.

16 4. Joby also has a reputation for great customer service. It is a company goal to
17 respond to customer inquiries immediately and personally – we do not send our customers to an
18 automated response system. If a customer has a problem with a Joby product, we will replace it,
19 no matter what. We are also very responsive to customer suggestions. For example, many of our
20 customers suggested that we add colors to our product line and we quickly implemented that
21 suggestion. Representative comments from real customers are posted on the "praise" page of
22 Joby's web site, www.joby.com, a copy of which is attached as Exhibit A.

23 5. I have attended a number of trade shows that were also attended by Tocad. On
24 many occasions, customers have expressed outrage about Tocad displaying its knock-offs of the
25 Gorillapod at the same show. On one occasion, a customer declined to accept the trade show
26 discount on the Gorillapod that I offered him and insisted on paying the full price. He explained
27 that he wanted to do his part to make sure Joby had the resources to keep innovating in the face of
28 these knock-offs.

6. Joby has received several written communications from customers expressing confusion and concern about Tocad's copying of the Gorillapod. On January 23, 2007, I received a copy of the email attached as Exhibit B, which had been sent to Joby's info@joby.com email box for customer inquiries.

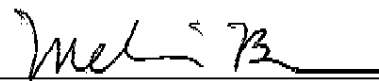
7. On April 6, 2007, I received the email attached as Exhibit C, which had been sent to Joby's info@joby.com email box. (Attorney-client communications have been redacted from the document.)

8. On June 21, 2007, I received a copy of the email attached as Exhibit D, which had been sent to Joby's info@joby.com email box.

9. On March 26, 2008, I received a copy of the email string and photographs attached as Exhibit E, which had been sent to Joby's info@joby.com email box. (Attorney-client communications have been redacted from the document.) As the email string reflects, a customer wrote in to complain about a broken tripod, which he initially insisted was a Joby Gorillapod. He reported that the broken tripod had no trademark or other name on it, but that it had been purchased at Best Buy. Joby's tripods are all marked with the word "JOBY" on the quick release button. Tocad's tripods have no trademark or other marking on the button or elsewhere, and the customer later discovered, to his surprise, that he had purchased a Tocad product instead.

10. One of the things I monitor is the "Gorillapod Love" discussion group page of the online photo-sharing site www.flickr.com. See <http://flickr.com/groups/gorillapod/pool>. In January 2007, I noticed a series of posts to the "Gorillapod Love" discussion group on www.flickr.com regarding whether the Tocad FlexPod was authorized by Joby or was instead an unauthorized knock-off. All of the posts on this topic, including my own, are reproduced in Exhibit F.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 26 day of March, 2008.



MELISSA BURNS